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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92066968
Party	Defendant Software Freedom Conservancy
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Submission	Opposition/Response to Motion
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Date	10/10/2018
Attachments	92066968 Opposition to Motion to Take Discovery.pdf(1345255 bytes)

)	
Software Freedom Law Center,)	
)	
Petitioner,)	
)	Cancellation No.
v.)	92066968
)	
Software Freedom Conservancy,)	
)	
Respondent.)	
)	

Respondent Software Freedom Conservancy (“Conservancy”), by its counsel, hereby opposes PETITIONER’S MOTION UNDER FED. R. CIV. P. 56(d) FOR DISCOVERY. Petitioner Software Freedom Law Center (“SFLC”) has failed to satisfy the requirement of FRCP 56(d) that it specify the reason why it cannot present facts essential to justify its opposition to Conservancy’s pending summary judgment motion on laches, acquiescence, and equitable estoppel. Therefore SFLC’s Motion For Discovery should be denied.

Despite full knowledge of Conservancy’s use and registration of the mark at issue, SFLC sat on its hands for years before petitioning to cancel Conservancy’s registration, took no discovery for months other than a single set of production requests on April 30, 2018, and waited to file this motion for discovery until the deadline for responding to Conservancy’s second summary judgment motion. Yet Petitioner SFLC has the nerve to assert that Conservancy is “stalling” and is trying to preclude Petitioner

SFLC from taking the discovery it supposedly needs in order to oppose the pending summary judgment motion.

The truth of the matter is that SFLC is attempting to weaponize the TTAB discovery process in order to harass Conservancy with sweeping discovery demands and overt threats, hoping to intimidate and punish not only Conservancy's present and former personnel, but even personally threatening Conservancy's outside counsel, Pamela Chestek:

Your effort to obstruct discovery ... places you at personal risk. We will be taking your sworn deposition shortly. If you prefer that to happen in a federal lawsuit rather than in this TTAB proceeding, we will oblige.¹

As explained below, SFLC's discovery demands range far beyond the issues before the Board in this single-registration cancellation proceeding, let alone the narrow issues presented by Conservancy's summary judgment motion. Conservancy has responded in good faith to SFLC's discovery requests. Despite SFLC's posturing and its pathetic complaints about the form of Conservancy's production, the fact is that Conservancy has searched for and provided to SFLC the relevant documents that it has, in a form that comports with the Rules and with standard TTAB practice.

As stated, in a motion for discovery under Rule 56(d) SFLC is required to provide specific reasons as to why it needs discovery to justify its opposition to Conservancy's motion for summary judgment. Rather than provide that specificity, SFLC instead treats this Rule 56(d) motion as if it were a motion to compel discovery directed to all of its production requests, whether or not relevant to the summary judgment issues now before the Board. And rather than provide any details regarding what discovery it needs and

¹ June 22, 2018 email from SFLC's counsel to Ms. Chestek, Conservancy's outside counsel. (Exhibit D to SFLC's motion for discovery [24 TTABVUE 57]).

why, SFLC merely tosses out the words “fraud” and “actual confusion” as if those magic words should automatically open the door to the outrageously broad discovery that it demands.

SFLC is understandably desperate to find some way to challenge Conservancy’s well-founded claims of laches, acquiescence, and estoppel, but it has not even pointed out which of its production requests are pertinent to the summary judgment motion, nor has it come to grips with the fact that Conservancy has already provided the relevant documents that it has.

This cancellation proceeding involves a single mark and single issue: the validity of Conservancy’s registration for the mark SOFTWARE FREEDOM CONSERVANCY for specified goods and services. Even if the Board were to wander beyond the territory of the pending summary judgment motion in order to consider SFLC’s production requests in the broader context of this cancellation proceeding, Conservancy has responded fully and in good faith to the production requests that are relevant. Conservancy has produced the documents that it has, other than documents that contain sensitive information and therefore are “attorneys-eyes-only.” And Conservancy will produce those sensitive documents if and when SFLC retains outside counsel.

In sum, the documents and information that Petitioner SFLC claims are necessary to respond to the issues of laches, acquiescence, and estoppel raised by Conservancy’s summary judgment motion are either already in SFLC’s possession, are irrelevant to the issues raised in the subject summary judgment motion, or do not exist. The Board should not provide SFLC with a license to troll through Conservancy’s files and continue to

harass Conservancy's people just because SFLC desperately and groundlessly utters the words "fraud" and "actual confusion."

I. INTRODUCTION AND BACKGROUND

SFLC's claim that Conservancy is trying to "railroad" SFLC by a "premature" summary judgment motion is patently groundless. SFLC essentially sat on its hand for the past five month, serving one set of document requests (on April 26, 2018), no interrogatories, no admission requests, and no notices of taking deposition.

Conservancy's current summary judgment motion certainly did not come as a surprise to SFLC, since Conservancy had filed essentially the same motion on December 11, 2017 [6 TTABVUE]. That motion was denied on December 28, 2017 because the affirmative defenses of laches, acquiescence, estoppel, and unclean hands had not been properly pleaded. [8 TTABVUE]. On April 26, 2018, the Board also denied Petitioner's Motion to Amend the Petition to add a fraud count [13 TTABVUE] and the next day, Conservancy filed a motion to amend its Answer to flesh out the affirmative defenses. [14 TTABVUE]. And so SFLC knew since December 2018 that Conservancy would seek summary judgment on these issues. Rather than provide any justification for its own inaction, SFLC feebly claims that the pending motion was filed "prematurely."

A. The History of This Dispute

As spelled out in Conservancy's summary judgment motion [20 TTABVUE 4-9], the parties to this proceeding have a long and intimate relationship. As a consequence, there is very little that Petitioner SLFC does not already know about Conservancy and its activities over the past 13 years. Nonetheless, on September 22, 2017 – three days before

the fifth anniversary of Conservancy's registration, and 11 years after SFLC created Conservancy – SFLC filed the subject petition for cancellation of the SOFTWARE FREEDOM CONSERVANCY registration. Surely SFLC – itself a provider of legal services – recognized from the get-go that this long period of delay and its extensive and intimate relationship with Conservancy over the previous decade would give rise to issues of laches, acquiescence, and estoppel. SFLC's last minute claim that it must have discovery in order to address these issues is transparently bogus.

B. The Issues Raised in the Summary Judgment Motion

Conservancy's summary judgment motion raises three issues: laches, acquiescence and equitable estoppel. The soundness of Conservancy's motion is apparent from the following established and indisputable facts [20 TTABVUE 2].

1. SFLC chose the name for Conservancy in 2005.
2. SFLC then formed Conservancy as an independent non-profit corporation.
3. SFLC knew of Conservancy's activities from the beginning through today, and has interacted frequently and continuously with Conservancy throughout that time.
4. SFLC knew of Conservancy's growth throughout that time.
5. SFLC did not oppose Conservancy's underlying application when it was published in 2012.
6. SFLC waited until 2017 to petition for cancellation.

7. In the 11 years since Conservancy was formed, SFLC never once complained to Conservancy or challenged the use of Conservancy's name or trademark until the petition for cancellation was filed.
8. SFLC never once mentioned to Conservancy that there had been any actual confusion of customers or consumers.
9. SFLC affirmatively stated in 2016 that it had no complaint with Conservancy.

SFLC's Motion for discovery is an obvious attempt to avoid an adverse ruling on Conservancy's summary judgment motion, a ruling that would put an end to SFLC's harassment campaign.

II. ARGUMENT

Once a motion for summary judgment is served and filed, the nonmoving party may, under FRCP 56(d), request that it be allowed to take discovery before responding to the motion. However, Rule 56(d) requires that the nonmovant show "by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." [Emphasis supplied].

SFLC has failed to show, by affidavit or declaration, any specific reasons why it needs additional, essential facts to justify its opposition. And there is certainly no explanation as to why SFLC sat on its hands for months, only to complain at the last minute about its supposed lack of discovery. Contrary to SFLC's claim that it did not have "a reasonable opportunity to engage in discovery" and "has not been able to conduct" additional discovery, there was nothing stopping SFLC from taking depositions,

serving interrogatories, and/or serving admission requests over the last five months. It simply failed to do so.

A. Petitioner Has Failed to Justify, by Affidavit or Declaration, Why It Needs Specific, Additional Discovery.

The only affidavit or declaration submitted by SFLC in support of its motion for discovery is a declaration by its attorney asserting nothing more than the self-serving claim that SFLC “does not have sufficient evidence regarding Registrant’s fraudulent intent,” which information is “crucial to the extent that Registrant’s knowledge of actual confusion” goes to the “heart of the fraud claim.” [Declaration of Mishi Choudhary, paragraph 16, 24 TTABVUE 22]. The reason why SFLC does not have “sufficient evidence regarding Registrant’s fraudulent intent,” despite Conservancy’s response to SFLC’s discovery requests and despite SFLC’s own intimate knowledge of Conservancy and its activities, is simple: there was no fraudulent intent.

SFLC conveniently skips over the first and essential predicate for establishing a fraud claim: without a false statement made to the USPTO there can be no fraud,² and yet SFLC cannot and does not point to any statement made by Conservancy that is false.

SFLC does claim – quite astoundingly – that the Conservancy “admitted in its Answer that Anthony K. Sebro made false statements on the Registrant’s Application.” [SFLC Motion for Discovery, page 4]. That claim is so obviously untrue that it merits sanctions under Rule 11.

Here is the allegation of SFLC’s petition for cancellation, followed by Conservancy’s Answer:

² In the seminal case of *In re Bose*, the CAFC held that “a trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO.” *In re Bose*, 91 USPQ2d 1938 (Fed. Cir. 2009).

32. Registrant swore in both the Application and Response that “to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.” [1 TTABVUE 7-8].

32. Admitted, except that the statement was made by the signatory, not the Registrant. [5 TTABVUE 4]

SFLC, in insisting that Conservancy admitted in this answer that it made a false statement in the underlying application, is either incredibly stupid or deliberately deceptive.

Conservancy’s Answer admits only that the statement itself was made, and that it was made by the signatory, Mr. Sebro. There is no admission that the statement was false, and yet that is the foundation on which SFLC rests its claim of fraud and on which it rests its motion for discovery.³

Before SFLC filed its motion for discovery it was told by Conservancy’s counsel, in no uncertain terms, that its assertion that Conservancy had made any such admission of falsity was entirely baseless:

We also flatly reject your puzzling assertion that Respondent has admitted that Mr. Sebro “swore to statements in the registration for the trademark in controversy that were false.” Respondent made no such admission and you surely know it. In its Answer, Respondent merely confirmed that Mr. Sebro made the subjective statement called for in the trademark application; Mr. Sebro’s statement was not an assertion of objective fact and Respondent’s routine confirmation that Mr. Sebro made that statement had nothing to do with its truth or falsity. [24 TTABVUE 76]

³ Moreover, there is no evidence that Mr. Sebro’s statement was made with an intent to deceive the USPTO. See the Declaration of Mr. Sebro, attached hereto as Exhibit 1, in which he confirms under oath that he made no false statements and that he had no intention to deceive the USPTO

Apparently lacking any other basis for its assertion of fraud, SFLC continues to cling to that same, obviously phony assertion that Conservancy admitted making a false statement to the USPTO.

The Board made it clear to SFLC, when SFLC attempted to amend its petition for cancellation, that a claim of fraud must be pleaded with particularity under FRCP 9(b):

Petitioner's conclusory allegation that the statements in the application declaration were false are not supported by a pleading of sufficient facts which, if proven, would establish that Respondent believed that a likelihood of confusion would result from Respondent's use of the involved mark in connection with the services identified in the application. In addition, Petitioner's allegation that Respondent knew of instances of actual confusion is not supported by specific factual allegations, in accordance with Rule 9(b), regarding the nature of the instances of confusion. Thus, Petitioner has failed to plead a legally sufficient claim of fraud based on the declaration in the underlying application for registration. [13 TTABVUE 5].

The Board then stated that "Respondent retains the option to replead the fraud claim if a sound basis for the claim is discovered during discovery." *Id.* In the ensuing five months, SFLC served its requests for production but did nothing else. Conservancy produced the relevant documents that SFLC requested.

Thus, five months after the denial of its attempt to add a claim of fraud to the petition for cancellation, SFLC's discovery has turned up nothing that would support a fraud claim. SFLC's motion for discovery provides no allegations of fact that would satisfy FRCP 9(b). Given the decade-long and intimate history between the parties, SFLC knows that the two have co-existed in relative harmony for more than a decade. SFLC formed Conservancy, chose its name, and worked side-by-side with Conservancy for years without any complaint regarding Conservancy's mark. Under these circumstances, how can SFLC – after eleven years of coexistence – claim with a straight face that

Conservancy committed fraud when it declared, in filing its application to register, that it believed itself to be the owner of the mark SOFTWARE FREEDOM CONSERVANCY and that no other person had the right to use any confusingly similar mark?

In light of the facts that personnel from SFLC and Conservancy have regularly appeared and spoken at the same panels, that they have invited each other to speak at their events, that SFLC promotes Conservancy's activities on its own website, and that SFLC has never once expressed any concern about the mark and name SOFTWARE FREEDOM CONSERVANCY,⁴ Petitioner SFLC's newly-minted concern about "actual confusion" is a sham. The sophisticated consumers of the services of SFLC and of Conservancy have no doubt or misunderstanding as to the differences between the two entities. SFLC knows that. If confusion had occurred, wouldn't SFLC have some evidence of same? Yet it provides nothing to suggest that there has been any actual confusion, and nothing to suggest that Conservancy committed fraud on the USPTO in declaring that it believed itself to be the owner of the SOFTWARE FREEDOM CONSERVANCY mark.

As stated previously, SFLC must be specific in stating the reason why it thinks it needs discovery. Yet the best it can do is offer a wholly groundless and patently false interpretation of the aforementioned Answer by Conservancy and a completely implausible assertion that SFLC committed fraud on the USPTO.

B. SFLC's Wish List Of Further Discovery Is Not Tied to the Summary Judgment Issues of Laches, Acquiescence and Equitable Estoppel

At page 3 of its Motion for Discovery, SFLC provides a wish list of discovery that it would like to have, but nowhere does it bother to tie these wishes to the issues before

⁴ See page 7 of the summary judgment motion, with citations to the declarations of Brad Kuhn and Karen Sandler [20 TTABVUE 8].

the Board on Conservancy's summary judgment motion: laches, acquiescence, and equitable estoppel. In fact, most of SFLC's 11 wishes call for documents that have no conceivable relevance to the summary judgment issues. Furthermore, SFLC conveniently ignores the documents that have, to the extent they exist, already been provided. In particular:

1. Conservancy has provided all the documents it has purporting to show "actual confusion" in Response to Production Request No. 17. In fact, SFLC acknowledged receipt of these documents in its motion for discovery at pages 9-10.

2. Conservancy has provided all the documents it has with regard to communications meant for SFLC, in response to Production Request No. 20. SFLC acknowledged its receipt of these documents at page 10 of its motion paper.

3. As to objections to 3rd party use, this request has no relevance to the issues contained in Conservancy's summary judgment motion. In any case, Conservancy has provided all the documents it has in response to Production Requests Nos. 9 and 16, and SFLC acknowledged its receipt of these documents at page 9 of its motion paper.

4. With regard to a comparisons between the parties products and services, SFLC knows full well what services each of the parties provides. In any case, Conservancy has provided all the documents it has in response to Production Request No. 18. SFLC acknowledged its receipt of these documents at page 9 of its motion paper.

5. With regard to communications meant for SFLC, see item 2 above.

6. As to the people who had knowledge of Conservancy's decision to file its application, these documents were sought by SFLC's Request No. 1. The only responsive

document is privileged and is listed on the privilege log provided to Petitioner. There are no more responsive documents.

7. With regard to Conservancy's decision to file its application for the subject mark, such documents were sought by Request No. 2. The only responsive document is privileged and is listed on the privilege log provided to Petitioner. There are no more responsive documents.

8. As to documents concerning Conservancy's exclusive right to use its mark, Conservancy has produced numerous documents regarding its formation and history, etc., in response to Request No. 36. Petitioner SFLC has not specified what documents it expects to be produced in response this request. In fact, the request is essentially asking for documents showing that others have the right to use the SOFTWARE FREEDOM CONSERVANCY mark, and there are no such documents.

9. With regard to the provision of legal services by Conservancy, Registrant has provided the documents it has in response to Request No. 26, and SFLC acknowledged receipt of same at page 10 of its brief. Moreover, SFLC is well aware of Conservancy's activities both from its interactions with Conservancy and from publicly available information regarding Conservancy.

10. As explained above, the request makes no sense, since Mr. Sebro made no false statement. Moreover, Conservancy merely stated the obvious: that statements made in a declaration are sworn to by the signatory, and Mr. Sebro was that signatory.

11. As to documents concerning Conservancy's supposed "scheme of fraud," there was no such scheme and so there are no documents. SFLC's fraud claim is a "pipe dream" unsupported by common sense, let alone reflected in any documents.

In sum, there are no non-privileged documents that are relevant to the subject summary judgment motion and have not been produced (other than those being temporarily withheld as “attorneys-eyes-only”).

The Board will recognize that if the mere assertion of “fraud,” without any factual predicate for the claim, entitles a party to the sweeping discovery that SFLC seeks, then the requirements of FRCP 9(b) for specificity in pleading fraud, and of Rule 56(d) for specificity in seeking discovery, are meaningless. SFLC has failed to provide any factual basis to support its claim of fraud despite its full knowledge of Conservancy’s activities from the formation of the Conservancy, including the choice of its name, through the filing of the underlying application for the SOFTWARE FREEDOM CONSERVANCY mark.⁵

C. SFLC’s Motion Seeks Documents Well Beyond the Scope of this Proceeding, Let Alone the Pending Summary Judgment Motion.

SFLC’s motion under Rule 56(d) is supposed to be limited to discovery of “facts essential to justify its opposition” to the summary judgment motion, but the motion is not so limited. Instead SFLC wants the Board to review all of SFLC’s 48 production requests (not counting sub-parts) and all of Conservancy’s responses and objections, regardless of their relevance to the summary judgment motion. Many of the requests are not even in the same ballpark with the narrow issues involved in this cancellation proceeding.

⁵ SFLC claims that Conservancy has waived its attorney-client privilege vis-à-vis fraud, but all Conservancy did in its blog post was to state that “the allegation is unequivocally unfounded,” the same conclusion that is set forth in Conservancy’s filings with the TTAB in this proceeding: “The unusual facts of this particular case further show that there cannot possibly be fraud by filing the trademark application” (See 9 TTABVUE 78). That statement is not a disclosure of any attorney-client communication, but a comment that, as pleaded, SFLC had not stated a claim for fraud. The Board agreed, denying SFLC’s motion to add a fraud claim to its petition for cancellation. [13 TTABVUE].

For example, SFLC insists that it needs documents responsive to Requests Nos. 6 and 8, which are directed not to the mark SOFTWARE FREEDOM CONSERVANCY at issue here, but to the wholly irrelevant marks SFC and THE SOFTWARE CONSERVANCY.

SFLC's Requests 22-24 seek documents concerning individuals named Patrick McHardy and Christoph Hellwig, yet SFLC provides no inkling of why these individuals have any relevance to the motion for summary judgment, and Conservancy is itself in the dark as to why these individuals are targeted regarding the matters at issue.

Request No. 29 likewise has no conceivable connection to this proceeding. It seeks "All documents referring or reflecting all insurance policies and insurance coverage with Software Freedom Conservancy has or has had, including malpractice and directors and officers liability insurance."

Requests No. 30 and 31 are likewise aimed at documents having no relevance to this proceeding. They seek all documents filed with the Charities Bureau of the New York State Office of the Attorney General, and all of Conservancy's financial records.

Request No. 38: "All documents concerning any social media account or social media username owned on behalf of SFC." What conceivable relevance would those documents have to this proceeding? What do they have to do with laches, acquiescence, and equitable estoppel?

Requests 39-42 likewise seek documents of no relevance to this proceeding:

Request No. 39: "All documents that report, describe, summarize, analyze, discuss or comment on any IRC channel owned or operated on behalf of SFC, including, but not limited to, logs."

Request No. 40: “All documents that report, describe, summarize, analyze, discuss or comment on any IRC channel owned or operated on behalf of SFLC, including, but not limited to, logs.” [Emphasis supplied].

Requests No. 41 and 42 demand copies of podcasts that are not only irrelevant to the summary judgment motion, but are publically available. In fact, some of the podcasts are available at SFLC’s website.

Other production requests expose SFLC’s attempt to harass and intimidate Conservancy and its personnel:

Request No. 32 seeks “All documents that describe, summarize, analyze, discuss or comment on Registrant’s recruitment of Anthony K. Sebro, Jr. to the post of General Counsel and to the Registrant’s Board of Directors.

Request No. 43: “All documents that report, describe, summarize, analyze, discuss or comment on the termination of employment of Bradley Kuhn at SFLC.”

Request No. 44: “All documents that report, describe, summarize, analyze, discuss or comment on the termination of employment of Karen Sandler at SFLC.”

To reiterate, these documents demanded by SFLC obviously have no pertinence whatsoever to the registrability of Conservancy’s trademark and perforce no relevance to the issues raised by Conservancy’s summary judgment motion.

As pointed out in the letter from Conservancy’s counsel to SFLC’s counsel [SFLC’s Exhibit H, 24 TTABVUE 75-77], “the subject cancellation proceeding concerns only the issue of the registrability of a single mark, SOFTWARE FREEDOM CONSERVANCY, for the goods and services identified in the registration. It does not concern other goods or services. It does not concern the mark THE CONSERVANCY or

the mark SFC. It does not concern issues regarding Respondent's employees, or its recruitment practices, or any other matter outside the narrow scope of this administrative proceeding."⁶ SFLC has ignored those fundamental facts. Instead, SFLC would rather waste the Board's time, and continue to harass Conservancy, by complaining about the form of Conservancy's document production and Conservancy's rightful objections to SFLC's demands.

SFLC insisted that a convoluted process for electronically signing files is required. Conservancy provided copies of the responsive documents on a DVD (other than attorneys-eyes-only documents), appropriately grouped and labeled to indicate the respective requests to which the documents pertain. That is normal practice in TTAB proceedings. It is apparent that SFLC has accessed and reviewed the documents that have been produced. What would be the point of Conservancy's producing those documents again in another form?

Conservancy offered to discuss SFLC's complaint about the privilege log [SFLC's Exhibit H, 24 TTABVUE 76], but SFLC chose to ignore the offer. And SFLC never asked for a discussion regarding the matters raised in the last letter from SFLC's counsel (SFLC's Exhibit E), even though Conservancy's counsel, Mr. Welch, had proposed same in his email of July 20, 2018 [SFLC's Exhibit G, 24 TTABVUE 70-71].

Nonetheless, Conservancy has provided a revised privilege log to SFLC, correlating each log entry with the pertinent production request and amplifying the description of each entry. Conservancy has also provided to SFLC a chart correlating the

⁶ The letter also called SFLC's attention to the principle of proportionality set forth in FRCP 26 and codified in Trademark Rule 2.120(a). Not only do SFLC's production requests seek documents of no relevance to the narrow issue of registrability involved in the cancellation proceeding, but they go well beyond any needs of the case, considering the importance of the issues and the parties' resources.

documents produced (by Bates number), as well as the withheld attorneys-eyes-only documents, to the production requests (this despite the fact that the documents included on the DVDs sent to SFLC were already sorted by request number). With regard to SFLC's demand for a "log of destroyed or lost documents," Conservancy has no such log and, in any case, it is not aware of any destroyed or lost documents.

D. Conservancy Has Provided the Relevant Documents It Has.

SFLC insists that Conservancy must have more documents that it hasn't produced, but that is simply not the case. Conservancy conducted a deliberate and thorough search of its files and produced what it has. It is not "withholding" any documents. There are no more documents to produce.

If there were evidence to rebut Conservancy's *prima facie* case of laches, acquiescence, and estoppel, SFLC would have it in its own files. For more than a decade SFLC has been well aware of what Conservancy has been doing: not only did SFLC participate in the creation of the Conservancy and choose its name, but SFLC has also worked with the Conservancy continuously for more than a decade, their respective personnel often appearing together at seminars and workshops. Moreover, SFLC served as Conservancy's legal counsel for years. Thus any suggestion by SFLC that it is somehow "in the dark" about Conservancy and its activities is wholly groundless.

As previously stated, the real motive behind SFLC's filing of the subject petition for cancellation, and its subsequent unhinged discovery demands, is plain to see from SFLC's production requests and related correspondence: it wants to harass SFLC and its employees by demands for documents and depositions – demands that SFLC and its

leaders think will intimidate and punish not only Conservancy's present and former personnel, but even Conservancy's litigation counsel for this proceeding.

III. CONCLUSION

It is time for the Board to put an end to SFLC's abuse of the legal process. SFLC's motion for discovery is a transparently baseless and contrived attempt to postpone an unfavorable ruling on Conservancy's summary judgment motion while continuing its harassment of Conservancy and its personnel.

For all of the foregoing reasons, Petitioner's Motion Under Rule 56(d) to Take Discovery should be denied.

SOFTWARE FREEDOM
CONSERVANCY



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Petitioner this 10th day of October 2018, by emailing a copy thereof to Petitioner's counsel at <MISHI@SOFTWAREFREEDOM.ORG>:

MISHI CHOUDHARY
SOFTWARE FREEDOM LAW CENTER
PO BOX 250874
NEW YORK, NY 10025



John L. Welch

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4212971
Mark: SOFTWARE FREEDOM CONSERVANCY
Registration date: September 25, 2012

Software Freedom Law Center

Petitioner,

v.

Software Freedom Conservancy

Registrant.

Cancellation No. 92066968

DECLARATION OF ANTHONY K. SEBRO, JR.
IN SUPPORT OF RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION
UNDER FED. R. CIV. P. 56(d) FOR DISCOVERY

I, Anthony K. Sebros, Jr., declare as follows:

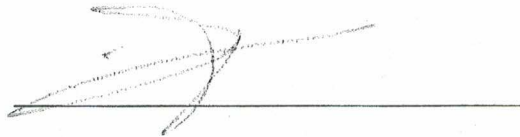
1. I am over the age of 18 and if called upon to do so could testify competently about the facts set forth in this declaration. The facts stated in this declaration are made on my personal knowledge.
2. I was General Counsel for Registrant Software Freedom Conservancy when the application to register the trademark SOFTWARE FREEDOM CONSERVANCY was filed.
3. On November 29, 2011 I signed the application for the registration that is the subject matter of this cancellation. When I signed the application, I was properly authorized to execute the application on behalf of the Software Freedom Conservancy, I believed that the Software Freedom Conservancy was the owner of the trademark/service mark sought to be registered, and to the best of my knowledge and belief no other person, firm, corporation, or association had the right to use the mark in commerce, either in the identical form thereof or in such near

resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.

4. The statements in the application made of my own knowledge were true and all statements made on information and belief I believed to be true. I made no false statements.
5. I had no intention of deceiving the USPTO.

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Anthony K. Sebro, Jr.



Dated: 10/5/2018